

CERTIFIED COPY

AT Lindsay
CP 04-10060

**United States Court of Appeals
For the First Circuit**

No. 07-2095

UNITED STATES,

Appellee,

v.

GEORGE SCHUSSEL,

Defendant, Appellant.

Before

Boudin, Chief Judge,
Torruella and Lynch, Circuit Judges.

ORDER OF COURT

Entered: September 28, 2007

Appellant George Schussel moves for release on bail pending appeal, pursuant to 18 U.S.C. § 3143(b). The district court denied bail based upon a determination that, although appellant was not likely to flee or pose a danger to any other person in the community if released, he had not made the requisite showing under 18 U.S.C. § 3143(b)(1)(B), that the appeal "raises a substantial question of law or fact likely to result in reversal, an order for new trial" or a non-prison or reduced sentence. We exercise "[a]n independent review of the bail decision tempered by deference to the district court's firsthand judgment of the situation." United States v. Bayko, 774 F.2d 516, 520 (1st Cir. 1985).

We have interpreted the words "substantial question of law and fact" as used in § 3143(b)(1)(B), to require a showing that the appeal raises "'a 'close' question or one that very well could be decided the other way.'" Id. at 523 (citation omitted). While that standard requires more than a showing that the issues are not frivolous, it does not require a showing that the district court

"is likely to be reversed." Id. "[T]he language in the statute which reads 'likely to result in reversal or an order for a new trial' is a requirement that the claimed error not be harmless or unprejudicial." Id.

None of the issues identified by appellant in his bail motion meets that standard. Consequently, the motion for release on bail pending appeal is denied.

By the Court:

Richard Cushing Donovan, Clerk.

MARGARET CARTER

By:

CERTIFIED COPY
I CERTIFY THIS DOCUMENT
IS A TRUE AND CORRECT COPY OF
THE ORIGINAL ON FILE IN MY OFFICE
AND IN MY LEGAL CUSTODY.

U.S. COURT OF APPEALS

"is likely to be reversed." Id. "[T]he language in the statute which reads 'likely to result in reversal or an order for a new trial' is a requirement that the claimed error not be harmless or unprejudicial." Id.

None of the issues identified by appellant in his bail motion meets that standard. Consequently, the motion for release on bail pending appeal is denied.

By the Court:

Richard Cushing Donovan, Clerk.

MARGARET CARTER

By: _____
Chief Deputy Clerk.

RECEIVED COPY
I HEREBY CERTIFY THIS DOCUMENT
AND CORRECT COPY OF
IS ON FILE IN MY OFFICE
IN MY LEGAL CUSTODY.

U.S. DISTRICT COURT OF APPEALS
BOSTON, MA

[Signature] Date: 9/28/07

[Cert. cc: Hon. Reginald C. Lindsay and Sarah A. Thornton, Clerk, U.S.D.C. of Massachusetts, cc: Messrs: Weinberg, DiMento, Kosow, Srebnick, Pirozzolo, Ms. Chaitowitz and Ms. Milagros Ortiz]